SUPREME COURT U.S.
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No.

IN THE

Supreme Court of the United States

ANTHONY GARNER, TIFFANIE DENNIS, SONJA COLWELL, PAT MCNEAR, SHELLY [illegible]SOM; HEATHER MCCOLLOUGH, THOMAS WASHINGTON, SPENCER BELLAMY, AND TERRANCE JENKINS, PETITIONERS

v.

CUYAHOGA COUNTY JUVENILE COURT, KEN LUSNIA, LEN MUNKS, DONNA COE, ANGELO LARDOMITA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

MERRIE M. [illegible]
Counsel of Record
7784 Reynolds Road
Mentor, OH 44060
440-856-0336

BURBY & TAYLOR ♦ WASH D.C. ♦ (800) 362-4141 ♦ USSCRIPTS.COM

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QUESTION PRESENTED

Whether under the standard for Civ. R. 56, petitioners in a race discrimination case are denied their due process and equal protection rights by the lower courts weighing evidence and excluding relevant admissible evidence, which decision directly contradicts this court's prior decision in *Reeves v. Sanderson Plumbing Products, Inc.*, (2000) 530 U.S. 133.

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OPINIONS BELOW

The opinion of the Court of Appeals is unreported as *Garner et. al. vs. Cuyahoga County Juvenile Court et.al.* 05-3476. It is reproduced in the Appendix at App. 1a. The opinion of the District Court granting respondents motion for summary judgment is unreported and is reproduced in the Appendix at App. 12a. En Banc denial at 13a.

JURISDICTION

The Court of Appeals decision was entered on August 2, 2006. A timely petition for rehearing was denied on October 31, 2006. Appendix at App. 13a.

RELEVANT PROVISIONS INVOLVED

The Fifth, Sixth, Seventh, and Fourteenth amendments and Civ. R. 56.

Amendment V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall

private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of

law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rule 56. Summary Judgment

(c) Motion and Proceedings Thereon.

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

STATEMENT

Petitioners are nine African-Americans that are current and former employees of the Cuyahoga County Juvenile Court and Detention Center. Respondents are the government officials running the detention center in Cleveland, Ohio. Petitioners, all African-Americans work or worked at the Juvenile Detention Center except one petitioner who now works at the Juvenile Court. The Detention Center and the Juvenile Court are managed by the same respondents, but are physically separated. Petitioners include one person with a Juris Doctorate degree; several petitioners with

Bachelor's Degrees and many with at least ten plus years of employment with respondents.

This case involves substantial constitutional and statutory issues as to how far a trial court may go in weighing evidence on a motion for summary judgment in a race discrimination and retaliation claim. By weighing the evidence, which is the charge of a jury, not the court, the courts have taken away the petitioners right to a jury trial without due process of law.

Additionally, Petitioners seek a review of the Sixth Circuit's and the trial court's decision because it is in conflict with two decisions from this honorable court, to wit; *Reeves v. Sanderson Plumbing Products, Inc.*, (2000) 530 U.S. 133 and the recent decision captioned *Burlington Northern and Santa Fe Railway Co., vs. White*, (2006) 126 S.Ct. 2405.

Petitioners provided an abundance of relevant and admissible evidence in their memorandum opposing summary judgment of years of racial discrimination (including that **the exact same respondents** in this case, Cuyahoga County Juvenile Court and the Court Administrator, Ken Lusnia had been found liable for race discrimination and retaliation against the petitioners' co-worker, Ruby Davis (African American) in 2002.). The evidence submitted also included proof of a **segregated work area**; unequal disciplinary standards for the exact same conduct including termination; denial of promotions; unequal pay; and retaliation.

Petitioners showed that the respondents kept a segregated work area by putting blacks on the "detention side" (which is clearly the dangerous side, this is where juveniles are housed) and white employees on the "court side." Additionally, white

employees were given the supervisory positions where the black employees were relegated to work. The actual numbers also show that white employees held over 60% of all supervisory positions, although there were more black employees than white employees. Finally, respondents could not even argue that white employees were given supervisory positions because they had more education because: (1) the education requirements were waived for white employees as shown *infra*; and (2) because many of the petitioners are better educated than most of the white supervisors.

The relevant number of black employees to white employees between the detention center side (which houses the juveniles) and the court side are broken down by the "detention side," which is the "black employee side" and the "court side," which is the white employee side. The numbers also show not only the segregated work areas, but also how blacks were denied the supervisory positions; although 58% of the total workforce is black, less than 32% of the supervisors are black. The actual numbers are:

Year 2000-Detention side: 157 blacks/32whites (13 black supervisors or less than 10% of black employees are supervisors and 12 white supervisors or 37.5% of white employees are supervisors; Court Side 186 blacks/213 whites (21 black supervisors (about 11%) of black employees are supervisors and 62 white supervisors so about 29% of white employees are supervisors. More compelling, however, is that with a total of 588 employees, 343 are black or 58% of the workforce is black. There are 108 supervisory positions for both sides. Although there are more black employees, only 34 or 31% of black employees are supervisors. **Whereas there are 74 white supervisors or 68% of all supervisors are white,**

although there are more black employees than white employees. Plus, the majority of the very few white employees on the "black side" or detention center side are supervisors.

Year 2001-Detention side:157blacks/32whites (12 black supervisors or less than 8% of black employees are supervisors and 12 white supervisors which means that 37.5% of white employees are supervisors;) Court Side 175 blacks/205 whites (27 black supervisors or 15% of black employees are supervisors and 61 white supervisors or 30% of white employees are supervisors). Again, the numbers show that white employees are on the court side and of the total number of employees 569; 332 are black or 58% are black. Of the total 112 supervisory positions, black employees fill 39 positions or 35% of all supervisory positions-while white employees hold 65% of all supervisory positions.

Year 2002-Detention side 151 blacks /34whites (10 black supervisors or less than 7% of black employees are supervisors and 14 white supervisors or 41% of white employees are supervisors); Court Side 173 blacks/191 whites (27 black supervisors or 15.6% of black employees are supervisors and 61 white supervisors or 32% of white employees are supervisors). Of the 112 total supervisory positions, black employees hold only 37 supervisory positions or 33% of all supervisory positions are held by blacks. White employees hold 65% of all supervisory positions.

Year 2003-Detention Side 151 blacks/34 whites (12 black supervisors or less than 8% of black employees are supervisors and 13 white supervisors or 38% of white employees are supervisors); Court Side 174 blacks/192 whites (24 black supervisors or 14% of black employees are supervisors and 58 white supervisors or 30% of white employees are

supervisors). Of the total number of supervisors, 107, there were 36 black supervisors or 34% of all supervisors were black. White employees make up over 65% of all supervisory positions. These numbers show that although the black employees outnumber the white employees, the large majority of supervisory positions are held by white employees. This is direct evidence of discrimination which the lower courts improperly disregarded and did not apply the correct standard for a summary judgment motion.

Petitioners also showed that they were disciplined whereas white employees were never disciplined for the exact same and/or equally egregious conduct. Petitioner Garner was terminated less than thirty days after Garner reported that his supervisor, Mr. Mazzarins (white) was forging documents and putting false information on official court documents. Respondents Munks and Lusnia were the Superintendent and Court Administrator respectfully, when Garner was terminated. (The same persons responsible for Ruby Davis's termination which a jury found to be illegal 2002.)

Petitioner Dennis (Bachelor's Degree) was threatened with termination based upon false accusations that she had forged another supervisor's name on a vacation document. Dennis fought the charges and was forced to hire a handwriting expert along with providing other evidence that showed she had **not** forged the name of anyone on the document. The document had actually been signed by respondent Lardomita who had alleged that she had signed his name. Petitioners showed that Respondent Lardomita has a history of harassing African Americans. Respondent Lardomita had also **physically attacked another black employee,** Mr. Richardson, during a

meeting. Respondent Lardomita was never disciplined for either incident. More incredible is the fact that at the same time that petitioner Dennis was trying to keep from getting terminated for the false accusations of forgery, another employee forged her name, but was not disciplined. The other employee **(who is not black) forged Dennis's name** on the **exact same document** that Dennis was alleged to have forged. Dennis reported that forgery, **the employee admitted the forgery**, but no disciplinary action was ever taken against that employee.

Petitioner Colwell (after the lawsuit was filed) was written up for taking her keys (which numerous other employees had done but were not written up) and **then she was physically attacked by another employee who testified that a supervisor was the person who involved her and caused her to go after Colwell.**

Petitioner Isom was attacked by a juvenile due to a white employee's mistake, yet defendant Munks disciplined her, not the white employee.

Petitioner McNear was disciplined for "tardies," but white employees were not subject to having to "clock in" like the black employees. The time clock was on the black side (detention) side but not on the white side (court side).

Petitioner McCullough was disciplined for putting a note up "going to urinate," however respondent Lardomita (white) was allowed to use profanity. Another white employee, Andrejack used profanity and was insubordinate to his supervisor (by screaming and threatening his supervisor) but was never disciplined.

Petitioners also showed that other black employees were also subjected to disparate treatment

as it related to discipline. Ms. Brown (African American) was accused (again by respondent Lardomita) of "peering at the boys while they were showering." Moreover, the "witness" to her "peering," Bruce McElroy (African American) refused to file a written complaint against Brown, **denying he had ever made the allegations and stating that Lardomita made the allegations up.** Defendants then **disciplined McElroy** for refusing to write up false allegations against Brown.

Petitioners Bellamy and Washington showed that they had worked for years (Washington 25 years; Bellamy 8 years) at the detention center and then were replaced by McTaggart (white), who had almost no experience at the detention center. They were terminated based upon a "re-hiring process that was flawed by the fact that the people who were interviewing the employees were comprised of all white supervisors, newly hired, with no experience. Washington and Bellamy provided evidence that within four months of their termination they had also spoken up and reported to respondent Munks (who terminated Garner and Davis) (and other managers) criminal activity including theft, within the detention center. In granting summary judgment, **the trial court disregarded the evidence that a white employee was retained.** The court stated that "8 African-Americans and one Hispanic were retained" and NEVER addressed the white employee who was retained over petitioners, although the petitioners had at least five years more experience than the white employee who was retained.

The other petitioners showed that the following positions were given to white employees with less experience and/or education than the plaintiffs.

Specifically: Petitioner Isom applied for the activities department and was not hired because she was "not qualified;" she applied for the Lead DO position but was never been contacted for that job.

Petitioner McCullough (college degree) applied for the following positions: (1) intensive probation in 1992 which she did not receive; (2) social worker in or around 1993, 1997, and in or around 1998 when Carla Andrejack (white) and Cynthia Lavoy (white) received the jobs although McCullough had ten years experience over both of them; (3) applied for probation officer in or around 1993, 1997, and again around 1999 but she was not given the position; (4) intake mediator in or around 1996; (5) intake officer in or around 1998.

Petitioner Colwell applied for the following jobs: (1) shelter care coordinator; (2) admission screener; (3) courtroom coordinator; (4) assistant bailiff; (5) detention service coordinator; and (6) overtime for admission screener. She was denied every one of these positions, although she had more experience than the white employees who received the positions. The Shelter Care Coordinator job was given to Craig Bruehler, white, although plaintiff Colwell had many more years of more experience than Bruehler.

Respondent Lardomita, who **only has a high school diploma**, was promoted numerous times and was promoted to the position of assistant superintendent. (That position puts him in the second highest position on the black side or detention side and it also is a higher level position over every single petitioner, including the ones with Bachelor Degrees and those with more years experience than him) The position that respondent Lardomita has requires a college degree, but Lardomita (white) only has a high school diploma. Further, numerous petitioners had

applied for similar or even lower level positions than Lardomita and were told they did not have either the experience and/or education requirements for those jobs. However, Lardomita was exempted from having to meet the job requirements. Lardomita also falsified his employment records-twice. He was never disciplined. Respondent Munks acknowledged that he knew the information in Lardomita's records were not "correct."

Petitioner Colwell was sent a letter denying her the opportunity to even interview for the position of detention services coordinator because Colwell "did not have the qualifications necessary for the position." **Ann Berchion (white) did not meet the educational and experience qualifications for the job, yet she was given the position.** Petitioner Dennis (college degree) applied for the following jobs: (1) probation department for at least two or three times and she never received the job; (2) social worker twice and never received the job; (3) unit manager and she was told by defendant that she "did not meet the qualifications;" and (4) shelter care coordinator which the white employee Craig Bruehler received, although Dennis had more time at the job than him.

Petitioner Jenkins (college degree) was demoted (not due to any disciplinary reasons, but rather to allow white employees to retain or be promoted to the supervisory position he held.) Jenkins was denied positions which were given to less qualified white employees, to wit; (1) probation department at least two times Jenkins was denied the position; (2) social worker twice and never received the position; (3) unit manager and he was told by defendants that he did not meet the qualifications; and (4) shelter care coordinator

which the **white employee** Craig Bruehler, with less experience received.

Petitioner Jenkins was also demoted from the position of unit manager where Tom Ross, (white) Harold Mazzarins, (white) Andrejack, (white) and Al David (Asian) were all hired as unit managers over Jenkins. At the time each of these white and one Asian people were promoted, Jenkins had worked at the detention center longer than every one of the white and non-black employees that were given the position of unit manager. Jenkins also had the college degree. None of these supervisors had more supervisory experience than Jenkins. Mazzarins had not even worked at the detention center when he was promoted to the position of unit manager.

In 1999 Jenkins again applied for the unit manager position, but Julia Chesslor (white) was given the position. Chesslor had never worked on the detention side, had no experience and received the job over Jenkins. At the time petitioner Jenkins applied for the position, he had been the acting unit manager while Josephine Jackson was on leave.

Petitioner McNear applied to be trained to work overtime as an admissions screener and had already performed most of the duties in that position, having worked at the detention center for the past 16 years. Respondent Lardomita (who has no degree and even lied on his CPQ stating he had a degree as discussed *supra*) told Petitioners McNear, Isom, and Colwell that they "could not train for the overtime position because **they did not have a college degree**, and because the position required a grade level 7. Three white employees (Ridgley, McCarthy, and Botten) two **of which did not have college degrees** were trained for the position.

Petitioners also showed how another African American, Nate Prather (who had worked at the detention side for years, applied for the position of compliance officer, that he was more qualified that the white employee, yet the **white employee received the position.** The proffered reason for Prather not receiving the job,-respondents stated that the white employee "interviewed better."

Petitioners also showed how they were discriminated against by the lack of posting of jobs. The white employees were simply promoted or hired without a job being posted; which would have allowed the petitioners to apply for the positions. These positions included Lardomita (white) received assistant superintendent and the chief of security; Rick Drost (white) assistant superintendent; Cheryl French (white) manager; Craig Bruehler (white) several managerial positions; Al David (Asian-non black) security manager.

Additionally, Petitioners Isom, Jenkins, Colwell, McNear, Dennis, were all denied the pay of grade level 6 for the job of detention officer, **which was the pay rate that the CPQ required.** A CPQ is called the comprehensive position questioner. This was the process that respondents used to determine the pay rate and/or how to promote employees. Respondents argued that the CPQ process ensured that everyone was paid equally, however, when the CPQ was submitted for black detention officers, including respondents, the CPQ process showed they should be paid at a grade level of 6. **However, they were never paid at that rate of pay.** Petitioners were denied this pay raise, and the **respondents could not explain why the pay raise was not given.** In other words, respondents defended the other promotions and pay

raises to white employees by arguing that the raises/promotions were due t the CPQ process. Respondents stated the CPQ process was not discriminatory and was essentially a "sterile process." But when the CPQ required that BLACK employees, detention officers, who were 90 to 98% black, were rated to be given a pay increase from grade level 5 to 6-respodnents never gave them the pay raise. **The only employees not paid at the CPQ level were black employees, including petitioners.**

Further, the "court side" of the Juvenile court which is 80% white employees and the detention side is 90% African-American, did not pay overtime to the **detention side** (Black side) employees until they had gone over 43 hours, but they paid the court side employees overtime after 37 hours. Further, the black side, (detention Center side) had to use a time clock-but the white side (court side) did not have a time clock.

Also, respondents made the CPQ process difficult if not completely unavailable to the black employees. Again, the CPQ is the process that the respondents often used to give pay increases and promotions to employees. Two African-American supervisors, Ms. Carter and Mr. Walker, both submitted CPQ's that were "lost." White employees never had their CPQ "lost" or had to wait for a year. Petitioner McNear submitted a CPQ and it was not approved until a year later, and after this lawsuit ensued. The facts in this case clearly support a *prima facie* case of race discrimination and retaliation. Additionally, petitioners provide sufficient evidence that the respondents' proffered reasons were not credible. The granting of summary judgment in this matter was improper and should be reversed.

REASONS FOR GRANTING THE PETITION

There are at least four reasons why this court must grant the petition. First, because the lower court's ruling directly conflicts with this court previous rulings in *Reeves v. Sanderson Plumbing Products, Inc.*, (2000) 530 U.S. 133 and *Burlington Northern and Santa Fe Railway Co., vs. White*, (2006) 126 S.Ct. 2405. Secondly, because the lower court's ruling does not conform to the requirements of Civ. R. 56. Third, because of the lower court's rulings, petitioners were denied due process of law by the court weighing evidence and disregarding relevant and evidence favorable to petitioners. This ruling caused these petitioners to be treated differently and more harshly than other similarly situated litigants where the lower court's properly applied the standard for a motion for summary judgment. Finally, the very basic concept of fairness and justice requires this honorable court to accept this petition. Surely the facts in this case scream for judicial review.

In *Sanderson*, this honorable court properly stated that: "*1. A plaintiff's prima facie case of discrimination (as defined in McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802, 36 L. Ed. 2d 668, 93 S. Ct. 1817, and subsequent decisions), combined with sufficient evidence for a reasonable factfinder to reject the employer's nondiscriminatory explanation for its decision, may be adequate to sustain a finding of liability for intentional discrimination under the ADEA..." (In the case at bar, respondents could not articulate any nondiscriminatory reasons for the pay inequities, etc. For example, respondents "reason" that the waiving of job requirements for Ann Berchion, (white) but not petitioner Colwell was-"that it was only

done one time." Which is not true, the requirements were waived numerous times for respondent Lardomita. Respondents never proffered any reasons that respondent Lardomita was given numerous promotions to positions that required a college degree when he possessed only a high school diploma. They acknowledged the paperwork was false wherein it said he had a degree, but never explained that issue as well. Nor did respondents offer any legal reason for not paying the Black detention officers the pay grade 6 as was **REQUIRED by their own CPQ process.**) Further in *Sanderson*, this court stated that "[t]he standard for judgment as a matter of law under Rule 50 mirrors the standard for summary judgment under Rule 56. Thus, the court must review all of the evidence in the record, cf., *e.g.*, *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 587, 89 L. Ed. 2d 538, 106 S. Ct. 1348, drawing all reasonable inferences in favor of the nonmoving party, but making no credibility determinations or weighing any evidence, *e.g.*, *Lytle* v. *Household Mfg., Inc.*, 494 U.S. 545, 554-555, 108 L. Ed. 2d 504, 110 S. Ct. 1331. The latter functions, along with the drawing of legitimate inferences from the facts, are for the jury, not the court. *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 255, 91 L. Ed. 2d 202, 106 S. Ct. 2505. Thus, although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe." Finally, this court concluded that "the Fifth Circuit misapplied the standard of review dictated by Rule 50. **The court disregarded evidence favorable to Reeves – the evidence supporting his prima facie case and undermining respondent's nondiscriminatory explanation** – and failed to draw all reasonable

inferences in his favor..." *Sanderson* at syllabus. (Emphasis added)

In the case at bar, the Sixth Circuit also misapplied the standard of review and also disregarded evidence favorable to the petitioners. Petitioners provided abundant direct and circumstantial evidence of discrimination. The court was not allowed to weigh the evidence and was required to "draw all reasonable inferences" in the petitioners favor-this the court did not do. This honorable court must accept this petition to establish that the standard for a summary judgment motion has not changed and is consistent with the holding in *Sanderson.*

The lower court never explained how the majority of white employees were promoted to supervisory positions while black employees with the same or greater education and experience were not promoted. Nor did the court address the segregated work area-which was clear from the direct evidence of the employee numbers between the two sides-detention side and court side. Nor did the court consider how the white employees were exempted from the job requirements for promotions and new jobs postings, while holding the black employees to the job requirements. Just as the Fifth Circuit did in *Sanderson*, the Sixth Circuit also misapplied the standard of review by weighing the evidence and disregarding pertinent and favorable evidence to the petitioners. At the very least petitioners sustained the burden of showing a "reasonable inference" of discrimination. This court clearly articulated in *Sanderson* the standard to be applied in a motion for summary judgment, but this standard was disregarded by the lower court. Petitioners must be afforded the

same standard as all other litigants and this court must accept this petition.

Additionally, as this court recently held in *Burlington Northern and Santa Fe Railway Co., vs. White,* (2006) 126 S.Ct. 2405 , that "[t]here was a sufficient evidentiary basis to support a Federal District Court jury's verdict in favor of an employer's maintenance worker under the anti-retaliation provision of Title VII of the Civil Rights Act of 1964 (42 U.S.C.S. § 2000e-3(a)) –which forbade an employer from discriminating against an employee or job applicant because that individual "opposed any practice" made unlawful by Title VII (42 U.S.C.S. §§ 2000e et seq.) or "made a charge, testified, assisted, or participated in" a Title VII proceeding or investigation..." *Burlington Northern* at headnote. In the case at bar, petitioners showed they had been retaliated against after they filed the lawsuit. In particular, petitioner Colwell was **physically attacked by a co-worker who admitted it was due to the supervisor's encouragement.** Again, the court was held to the standard of a Civ. R. 56 summary judgment motion. They were not allowed to weigh the evidence, therefore, this honorable court must accept this petition to correct the erroneous ruling.

Secondly, it is axiomatic that in a motion for summary judgment, "[s]ummary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, togetner with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). .." *Mead Corporation vs. ABB Power Generation, Inc.*, (6th Cir. 2003) 319 F.3d 790, 795. In the case at bar, the facts submitted by petitioners

clearly proved a *prima facie* case of race discrimination and retaliation. In addition, respondents could not proffer any facts that negated the numerous facts petitioners showed regarding discriminatory practices in the areas surrounding pay, discipline, etc.

As is abundantly clear, Civ. R. 56 does not allow the court to weigh facts. The facts were hotly contested and respondents simply did not show where the facts provided by petitioners were untrue. Again, respondents did not proffer any nondiscriminatory reasons to explain away the numerous facts shown by petitioners to be discriminatory. Again, respondents "reason" that the waiving of job requirements for Ann Berchion, (white) but not petitioner Colwell was that "that it was only done one time." Nor did respondents ever proffer any nondiscriminatory reason that respondent Lardomita was given numerous promotions to positions that required a college degree, yet he possessed only a high school diploma. Nor did respondents offer any legal reason for not paying the Black detention officers the pay grade 6 as was **REQUIRED by their own CPQ** process. Therefore, the standard for summary judgment was misapplied by the lower court. This honorable court must grant this petition.

The fifth amendment requires all people to be afforded "due process of law." The seventh amendment requires that all civil litigants be afforded a trial by jury. In the case at bar, where the lower court weighed evidence and misapplied the standard for a summary judgment motion, the due process rights of the petitioners have been violated. Additionally, the lower court usurped the petitioners' right to have the facts heard by a jury. Instead, the lower court heard the

facts and weighed the evidence which the court should not have done.

Finally, the facts in this case clearly met the burden as required by Civ. R. 56. Petitioners should be given the opportunity to have a jury hear their case and weigh the evidence, that is the job of the jury.

CONCLUSION

Petitioners are all African Americans. They have all suffered discrimination and retaliation by their employer-the County government in Ohio. African Americans have suffered from discrimination since the inception of this country. In the case at bar, this discrimination should be heard by a jury as required by the constitution and the statutory provisions of this country. Petitioners deserve to have their case heard by this honorable court to show that all persons are afforded justice in this country.

Respectfully submitted,
Merrie M. Frost
Counsel of Record
7784 Reynolds Road
Mentor, OH 44060
440-856-0336

(any footnotes trail end of each document)

No. 05-3476

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ANTHONY GARNER et al.,
Plaintiffs-Appellants,

v.

CUYAHOGA COUNTY JUVENILE COURT et al.,
Defendants-Appellees.

August 2, 2006, Filed

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COUNSEL: For ANTHONY GARNER, et al., Plaintiff - Appellant: Merrie M. Frost, Mentor, OH.

For CUYAHOGA COUNTY JUVENILE COURT, et al., Defendant - Appellee: Thomas L. Colaluca, William F. Schmitz, Jeffrey C. Miller, Ann Kuhlman, Johnson & Angelo, Cleveland, OH.

JUDGES: Before: GILMAN and SUTTON, Circuit Judges; WISEMAN, District Judge. *

OPINION BY: RONALD LEE GILMAN

OPINION: OPINION

RONALD LEE GILMAN, Circuit Judge. Anthony Garner, along with 14 other current and former African-American employees (collectively, the employees) of the Cuyahoga County Juvenile Court (CCJC), brought suit in the Court of Common Pleas in Cuyahoga County, Ohio against CCJC and several of its Caucasian officials and supervisors (collectively, CCJC). The employees alleged various theories of racial discrimination in violation of state and federal law. CCJC removed the action to federal court. After one plaintiff-employee and five individual defendants were dismissed from the action, the district court granted summary judgment in favor of CCJC, holding that the employees had failed to allege sufficient facts to support their state and federal claims of unlawful employment discrimination. On appeal, the employees claim that various procedural orders of the district court were motivated by racial bias and that the district court erred in granting summary judgment to CCJC. For the reasons set forth below, we AFFIRM the judgment of the district court.

I. BACKGROUND

The employees raise virtually identical claims against CCJC, all of which involve allegations of racial discrimination. When the initial complaint was filed in July of 2002, there were only two plaintiffs--Anthony

Garner and Tiffanie Dennis. The complaint raised the following claims: (1) termination in violation of Ohio's public policy, (2) employment discrimination in violation of Ohio Revised Code § 4112, (3) an equal-protection violation brought pursuant to 42 U.S.C. § 1983, and (4) malicious conduct warranting a punitive damages award.

Two additional lawsuits involving similar claims were subsequently filed, causing the district court to consolidate the three actions. The second amended complaint named the following plaintiffs: Spencer Bellamy, Vanessa Brown, Sonja Colwell, Tiffanie Dennis, Anthony Garner, Shelley Isom, Terrance Jenkins, Rayshunn Lilly, Heather McCallough, Patricia McNear, Monique Moore, Nathaniel Prather, Bruce Richardson, Thomas Washington, and Kevin Wesley. Ten defendants were named. Two of them–Mark Lusnia and Joseph Russo–were named in their official capacities only. The eight remaining defendants were named both individually and in their official capacities: Janie Carter, Donna Coe, Al David, Jimmy Dimora, Richard Drost, Charvez James, Angelo Lardomita, and Len Munks. Employee Wesley, as well as defendants Carter, David, Dimora, Drost, and James, were later dismissed from the suit. In addition to the counts included in the original complaint, the employees added state-law claims of intentional infliction of emotional distress, unlawful retaliatory discharge and discipline, civil conspiracy, and civil aiding and abetting. They requested punitive damages in the amount of $ 10 million dollars.

In July of 2003, CCJC filed a motion for partial judgment on the pleadings against Bellamy, Moore, and

Washington, arguing that the federal claims raised by these three employees were barred by the statute of limitations because they had not been employed by CCJC within two years preceding the action. While this motion was pending, the discovery deadline was set for July 31, 2003. In September of 2003, CCJC filed a motion requesting that the district court increase the page limit for dispositive motions from 30 pages to 50 pages, which the court denied. Also in September of 2003–two months after the discovery deadline had passed–the employees requested leave to take an additional deposition, which the court also denied.

CCJC soon thereafter filed 11 motions for summary judgment, pertaining to all the employees other than Bellamy, Moore, and Washington. The employees filed an opposing memorandum accompanied by affidavits and exhibits. At a pretrial conference following the filing of the summary judgment motions and the response, the district court, on its own initiative, permitted the employees to file an additional memorandum in opposition to CCJC's summary judgment motions. They did so in December of 2003.

Also in December of 2003, CCJC sought a continuance of the trial date, originally set for January of 2004, in part due to the pendency of the dispositive motions. The district court agreed to set aside the January trial date. On December 31, 2003, the employees filed a motion to "update affidavits and exhibits" in response to CCJC's motions for summary judgment. The district court denied the employees' motion, reasoning that the deadline had long passed.

By March of 2005, the district court had granted summary judgment in favor of CCJC with respect to all of the employees, including Bellamy, Moore, and Washington. This timely appeal followed.

II. ANALYSIS

A. The district court did not abuse its discretion in making various procedural rulings

Pointing to several of the district court's procedural rulings, the employees argue that the district court displayed "extreme favoritism and bias" toward CCJC. In particular, the employees claim that the district court permitted CCJC to file "over 440 pages to support their case," while denying the employees the opportunity to add a similar amount of pages to supplement their briefs. They also complain that the district court granted a 14-month extension to CCJC that was prejudicial to the employees. Throughout this portion of the employees' brief, they routinely characterize the district court's procedural rulings as racially motivated.

We review the procedural and discovery orders of the district court under an abuse-of-discretion standard, and we will not disturb the orders unless they resulted in substantial prejudice to the employees. *See Doe v. Lexington-Fayette Urban County Gov't*, 407 F.3d 755, 765 (6th Cir. 2005) (holding that the district court did not abuse its discretion in denying a motion to extend discovery by 30 days). A district court abuses its discretion when it relies on clearly erroneous findings of fact, improperly applies the law, or applies an

improper legal standard. *Romstadt v. Allstate Ins. Co.*, 59 F.3d 608, 615 (6th Cir. 1995).

Although the employees argue that the district court's procedural orders were improper and racially motivated, they fail to cite any cases directly on point. The cases on which they rely range from ineffective assistance of counsel to the right of a criminal defendant to a jury trial—cases with broad statements about due process and equal protection, but with little relevance to the employees' claims. They also deal with the de novo standard of review that is inapplicable to the present case.

The employees appear to contest seven procedural orders of the district court. As best we can tell, they are: (1) an order denying the employees' motion to "update" their exhibits and affidavits, (2) an order denying the employees' request to take an additional deposition after the discovery deadline had passed, (3) an order denying the employees' motion to strike CCJC's motion for summary judgment, (4) an order striking certain portions of the employees' affidavits for failure to comply with the Federal Rules of Civil Procedure, (5) an order extending the deadline for CCJC to file its motion for partial judgment on the pleadings, (6) an order continuing the trial date until the district court ruled on the summary judgment motion, and (7) an order granting CCJC's motion for an extension of time in which to supplement the record.

The employees couch their objections to these procedural rulings in broad terms of due process and equal protection, arguing that the district court's bias in favor of the "white defendants" motivated its orders.

Because they do not articulate the precise grounds for their objections to each of the district court's orders, we are unable to respond to them one-by-one. Instead, we will focus on the two orders to which the employees have directed their most pointed criticism--the order denying the employees' motion to "update" their exhibits and affidavits and the order denying their motion to strike portions of CCJC's motions for summary judgment.

In a motion dated March 25, 2004, the employees requested leave to supplement their memorandum in opposition to CCJC's summary judgment motions with additional briefing and exhibits. They argued that this request was warranted because CCJC submitted "over 400 pages in their [summary judgment] brief," making it difficult for the employees to respond within the designated page limits. In an earlier order, the district court had granted the employees 30 additional pages for a supplemental memorandum, but had denied their request to "update the [corresponding] affidavits and documents." The employees characterized this decision of the district court as "patently unfair," and requested remediation in their March 25, 2004 motion. The district judge denied the motion, reasoning that although no page limitation had ever been designated for evidentiary materials, the deadline for supplementing the record had expired.

In another motion dated March 25, 2004, the employees requested that the district court strike portions of CCJC's summary judgment motions and corresponding documents. The employees argued that the "defendants completely ignored [the order establishing the 30-page-per-motion limit] and submitted over 400 pages for

their brief," which resulted in "unfair[] prejudice" to the employees. On appeal, the employees claim that the district court unfairly permitted CCJC to exceed the page limit, and that the district court should have either given them the same limit or stricken the excess portion of CCJC's submissions. They argue that this would have allowed the employees to submit additional evidentiary materials after the discovery deadline had ended. Moreover, they claim that the district court's orders were racially motivated.

The employees, however, fail to recognize two critical facts. First, the district court never established a page limitation for evidentiary materials. Many of the "extra" pages about which the employees complain, therefore, were not subject to the 30-page-per-motion limit. Because the employees themselves submitted over 300 pages of affidavits and exhibits with their original memorandum in opposition to CCJC's summary judgment motions, one can assume that the employees were well aware that the district court had imposed no such limit. Second, although the district court *did* impose a 30-page limit for briefing the dispositive motions, the 30-page limit applied to *each* of CCJC's motions for summary judgment. With 14 employees remaining in the case, there were 14 motions for summary judgment or for partial judgment on the pleadings filed by CCJC.

The employees correctly note that CCJC exceeded its page limitation when it submitted the motions for summary judgment. As a result of CCJC's excess, the district court, on its own initiative, granted the employees additional pages for their memoranda in opposition to the motions for summary judgment. The

employees failed to take full advantage of this extension, choosing to submit only 18 additional pages. At no point did the employees ask the district court for clarification of the page limits or file individual responses to CCJC's summary judgment motions. Instead, the employees chose to respond to all of CCJC's motions with one response in opposition.

The employees' contention that the district court's decisions were racially motivated and that it issued orders in the present case that favored the "white defendants" is not borne out by the record. Claiming in summary fashion that "there was no justifiable reason" for the court's actions, the employees have not pointed to any actual evidence of bias contained in the orders or otherwise evident from their interaction with the district court. At various points throughout the litigation, moreover, the district court issued orders that were beneficial to the employees and adverse to CCJC. For example, the district court denied CCJC's motion requesting an extension of the page limitation to 50 pages per motion. The district court also sua sponte granted a 30-page extension to the employees after CCJC submitted its motions for summary judgment. These are not the actions of a racially motivated district court. Moreover, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994).

Our review of the record also indicates that the district court did indeed have good grounds for its various procedural rulings. It was attempting to manage a case with 15 original plaintiffs and 10 defendants, a difficult task by any measure. The employees have presented no

evidence that the orders denying their motions to "update" their evidentiary materials and to strike portions of CCJC's submissions, along with the other orders mentioned only in passing by the employees in their brief, were issued for any reason other than to maintain the district court's control over the discovery process. Such matters of docket control are in the sound discretion of the district court. *In re Air Crash Disaster*, 86 F.3d 498, 517 (6th Cir. 1996) (holding that the district court did not err in adhering to its original discovery deadline). In sum, we find no evidence that the district court abused its discretion regarding the procedural orders. The employees' claims of racial motivation or bias are therefore meritless.

B. The district court did not err in granting summary judgment to CCJC

Orders granting summary judgment to CCJC were issued with respect to the remaining 14 plaintiffs. The district court held that Bellamy, Brown, Dennis, Garner, Isom, Lilly, Moore, Richardson, and Washington had failed to present *any* evidence to support their state and federal claims of racially motivated employment discrimination and retaliation. It further held that Colwell, Jenkins, McNear, McCollough, and Prather had failed to present *sufficient* evidence to support their claims. Aside from the differences between the failure to present any evidence and the failure to present sufficient evidence, the district court's summary judgment orders contain remarkably similar legal analysis.

Although the employees argue that the district court ignored or "changed" important evidence of racial

discrimination on the part of CCJC, this contention is unsupported by the record. The district court engaged in a careful analysis of the facts as they pertained to each employee's claims, and it determined that the allegations of racial discrimination and other unlawful behavior were unfounded. In their brief, the employees continue to proffer the same assertions raised below, failing in almost all instances to cite to the record. Not only do the employees fail to base their allegations on facts in the record, they also fail to offer any relevant criticism of the district court's legal analysis.

Because the reasoning that supports summary judgment for CCJC has been clearly articulated by the district court in its thorough and well-written opinions, and because we are unpersuaded by the employees' argument that the court displayed favoritism and bias in rendering its procedural orders, the issuance by us of a detailed written opinion would be unduly duplicative. The summary judgment orders rendered by the Honorable John R. Adams, Judge of the United States District Court for the Northern District of Ohio, are accordingly AFFIRMED on the basis of the reasoning detailed in his Opinions.

Footnote

* The Honorable Thomas A. Wiseman, Jr., Senior United States District Judge for the Middle District of Tennessee, sitting by designation.

CASE NO. 1:02CV1286

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

ANTHONY GARNER, et al.,
Plaintiffs,

v.

CUYAHOGA COUNTY JUVENILE COURT, et al.,
Defendants.

March 11, 2005, Filed

JUDGMENT

Judge John R. Adams

The Court has granted summary judgment in favor of Defendants on all of the claims of all Plaintiffs who have not been voluntarily dismissed from this case. Specifically, the Court has granted summary judgment on the claims of Plaintiffs: (1) Anthony Garner; (2) Bruce Richardson; (3) Vanessa Brown; (4) Tiffanie Dennis; (5) Shelly Isom; (6) Terrance Jenkins; (7) Rayshunn Lilly; (8) Heather McCollough; (9) Patricia McNear; (10) Sonja Colwell; (11) Nathaniel Prater; (12) Monique Moore; (13) Thomas Washington; and (14) Spencer Bellamy.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that judgment is entered in favor of Defendants and against Plaintiffs.

IT IS SO ORDERED.

No. 05-3476
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ANTHONY GARNER et al.,
Plaintiffs-Appellants,

v.

CUYAHOGA COUNTY JUVENILE COURT et al.,
Defendants-Appellees.

Filed: 10/31/06

BEFORE; GILMAN and, SUTTON, Circuit Judges; and WISEMAN,* District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon riginal submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

Footnote

Hon. Thomas A. Wiseman, Jr., Senior United States District Judge for the Middle District of Tennessee, sitting by designation.

(2)

No. 06-1066

Supreme Court, U.S.
FILED
MAR 2 2007
OFFICE OF THE CLERK

In The
Supreme Court of the United States

ANTHONY GARNER, ET AL.,

Petitioners,

vs.

CUYAHOGA COUNTY JUVENILE COURT, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

WILLIAM D. MASON, Prosecuting Attorney
of Cuyahoga County, Ohio
CHARLES E. HANNAN* (0037153)
Assistant Prosecuting Attorney
**Counsel of Record*
The Justice Center, Courts Tower,
8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
Tel: (216) 443-7758/Fax: (216) 443-7602
E-mail: P4CEH@cuyahogacounty.us

Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW

Petitioners present the following question for review:

Whether under the standard for Civ. R. 56, petitioners in a race discrimination case are denied their due process and equal protection rights by the lower courts weighing evidence and excluding relevant admissible evidence, which decision directly contradicts this court's prior decision in *Reeves v. Sanderson Plumbing Products, Inc.*, (2000), 530 U.S. 133.

LIST OF ALL PARTIES TO THE PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The following nine (9) petitioners were plaintiffs/appellants in the proceedings before the United States Court of Appeals for the Sixth Circuit:

Anthony Garner
Tiffanie Dennis
Sonja Colwell
Patricia McNear
Shelley Isom
Heather McCollough
Thomas Washington
Spencer Bellamy
Terrance Jenkins

The following four (4) persons were plaintiffs/appellants in the proceedings before the United States Court of Appeals for the Sixth Circuit but are not petitioners here:

Vanessa Brown
Monique Moore
Nathaniel Prather
Bruce Richardson

Though initially a plaintiff/appellant, Rayshunn Lilly was dismissed as a party during the course of the appeal and is not a petitioner here.

LIST OF PARTIES TO THE PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT – Continued

The following five (5) respondents were defendants/appellees in the proceedings before the United States Court of Appeals for the Sixth Circuit:

Cuyahoga County Juvenile Court
Administrative Judge Joseph F. Russo
Kenneth J. Lusnia
Leonard Munks
Donna Coe
Angelo Lardomita

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit was not reported for official publication as *Anthony Garner, et al. v. Cuyahoga County Juvenile Court, et al.*, Case No. 05-3476. It appears in the Appendix to the Petition for Writ of Certiorari at App. 1a.

The ruling of the United States Court of Appeals for the Sixth Circuit that denied the petition for rehearing en banc also was not reported for official publication. It appears in the Appendix to the Petition for Writ of Certiorari at App. 13a.

The fourteen (14) separate opinions and orders of the United States District Court for the Northern District of Ohio, Eastern Division, granting summary judgment in favor of the respondents on the claims asserted by each of the fourteen (14) plaintiffs in the trial court, including those of the nine (9) petitioners here, were not reported for official publication. Contrary to the statement contained in the petition for writ of certiorari, these opinions are *not* contained in the Appendix to the Petition for Writ of Certiorari.

The District Court's judgment entry granting judgment in favor of the respondents and against the petitioners (and the other plaintiffs) pursuant to Fed.R.Civ.P. 58(a) appears in the Appendix to the Petition for Writ of Certiorari at App. 12a.

JURISDICTION

The judgment of the Court of Appeals was entered on August 2, 2006. The order of the Court of Appeals denying the petition for rehearing en banc was entered on October 31, 2006.

The Petition for Writ of Certiorari was filed in the Supreme Court of the United States on January 26, 2007. Petitioners invoke this Court's appellate jurisdiction pursuant to 28 U.S.C. § 1254.

STATEMENT OF THE CASE

The Court of Common Pleas for Cuyahoga County, Ohio, Juvenile Division, oversees the operations of the Cuyahoga County Juvenile Court and the Juvenile Detention Center, in which alleged or adjudicated juvenile delinquents may be detained pending court proceedings.

In 2002, fourteen (14) current or former employees of the Cuyahoga County Juvenile Court Detention Center filed three (3) separate lawsuits in the Court of Common Pleas for Cuyahoga County, Ohio, General Division. The lawsuits were civil damages actions in which the plaintiffs alleged that various officials and/or employees of the Cuyahoga County Juvenile Court and Detention Center had violated the plaintiffs' rights under the 14th Amendment to the United States Constitution and 42 U.S.C. § 1983 by engaging in discriminatory employment practices. The plaintiffs additionally asserted claims arising under Ohio state law.

All three (3) state court lawsuits were removed to the United States District Court for the Northern District of

Ohio, Eastern Division, pursuant to 28 U.S.C. § 1441 *et seq*. They were assigned to one (1) United States District Court judge and proceeded at least for purposes of discovery as essentially one case comprised of fourteen (14) plaintiffs.

The following fourteen (14) individuals ultimately pursued their claims as plaintiffs in the District Court: Anthony Garner; Tiffanie Dennis; Sonja Colwell; Patricia McNear; Shelley Isom; Heather McCollough; Thomas Washington; Spencer Bellamy; Terrance Jenkins; Rayshunn Lilly; Vanessa Brown; Monique Moore; Nathaniel Prather; and Bruce Richardson.[1] Although there were ten (10) defendants named initially, the plaintiffs ultimately pursued their claims against the following five (5) defendants who are now respondents: Cuyahoga County Juvenile Court, through its Administrative Judge Joseph F. Russo; Kenneth J. Lusnia; Leonard Munks; Donna Coe; and Angelo Lardomita.

Following a period for discovery, the defendants jointly filed a motion for summary judgment for each of the fourteen (14) plaintiffs to address each individual plaintiff's federal and state law claims. The plaintiffs filed an opposing memorandum accompanied by affidavits and

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[1] Although there were still fourteen (14) plaintiffs by the time the District Court granted the defendants' motions for summary judgment, only thirteen (13) plaintiffs pursued an appeal to the Sixth Circuit Court of Appeals (because plaintiff Lilly was dismissed from the case during the appeal), and only nine (9) plaintiffs are now petitioners before this Court (with plaintiffs Brown, Moore, Prather, and Richardson seemingly having abandoned their claims). This Brief in Opposition will accordingly identify those plaintiffs seeking review here as *petitioners*, in contrast to those former plaintiffs who are not seeking review here.

exhibits. The District Court, on its own initiative, subsequently allowed the plaintiffs to file an additional memorandum in opposition to the defendants' motions for summary judgment, which they did, though the court later denied the plaintiffs' further motion to "update affidavits and exhibits" because the deadline for filing such matters had long since passed.

Thereafter, in fourteen (14) separate memorandum opinions entered over the period from November 18, 2004 through March 11, 2005, the District Court analyzed each individual plaintiff's claims. As stated by the Court of Appeals in its opinion, the District Court held that petitioners Garner, Dennis, Isom, Washington, and Bellamy (and plaintiffs Lilly, Brown, Moore, and Richardson) had failed to present *any* evidence to support their federal and state law claims of racially motivated employment discrimination. See Petition, Appendix at 10a (emphasis in original). The District Court further held that petitioners Colwell, McNear, McCollough, and Jenkins (and plaintiff Prather) had failed to present *sufficient* evidence to support their employment discrimination claims. See Petition, Appendix at 10a (emphasis in original). Determining that there were no material issues of fact and that the defendants were entitled to judgment as a matter of law, the District Court entered summary judgments in favor of the defendants as to each individual plaintiff.

In separate proceedings that remain pending in the District Court, the trial court granted the defendants' motion for an award of attorney's fees and costs under 42 U.S.C. § 1988 after determining that most of the claims of petitioners Garner, Dennis, Isom, McNear, Bellamy, and Washington (together with those of plaintiffs Richardson, Brown, and Moore) "were frivolous, unreasonable, and

without foundation, and that the plaintiffs should have dismissed these claims, at the latest, after discovery had shown that they were without evidentiary support."

For their appeal to the Sixth Circuit Court of Appeals, the plaintiffs/appellants argued that the District Court let the defendants exceed the 30-page limit for their motions for summary judgment but supposedly did not let the plaintiffs exceed the 30-page limit for their opposing memoranda. The plaintiffs/appellants also argued that the District Court erroneously denied their motion to strike the defendants' memoranda that exceeded the 30-page limit. They further contended that there were genuine issues of material fact and accused the trial court of, among other things, having weighed the evidence. The plaintiffs/appellants additionally complained that the District Court granted time extensions to the defendants but did not grant time extensions to the plaintiffs.

On appeal, the Sixth Circuit Court of Appeals first rejected all challenges to the District Court's procedural rulings. Proceeding to the merits, the Court of Appeals succinctly stated:

> Although the employees argue that the district court ignored or "changed" important evidence of racial discrimination on the part of [respondents], this contention is unsupported by the record. The district court engaged in a careful analysis of the facts as they pertained to each employee's claims, and it determined that the allegations of racial discrimination and other unlawful behavior were unfounded. In their brief, the employees continue to proffer the same assertions raised below, failing in almost all instances to cite to the record. Not only do the employees fail to base their allegations on facts in

> the record, they also fail to offer any relevant criticism of the district court's legal analysis.
>
> Because the reasoning that supports summary judgment for [respondents] has been clearly articulated by the district court in its thorough and well-written opinions, and because we are unpersuaded by the employees' argument that the court displayed favoritism and bias in rendering its procedural orders, the issuance by us of a detailed written opinion would be unduly duplicative. The summary judgment orders rendered by the Honorable John R. Adams, Judge of the United States District Court for the Northern District of Ohio, are accordingly **AFFIRMED** on the basis of the reasoning detailed in his Opinions.

See Petition, Appendix at 10a-11a.

ARGUMENT

Respondents respectfully urge this Court to deny the petition for writ of certiorari because the decision by the Sixth Circuit Court of Appeals does not present any substantial issue of national significance that would warrant further review.

In particular, the petitioners' employment discrimination claims alleging disparate treatment and disparate impact did not present any particularly novel issues for consideration. Addressing the petitioners' contention that the District Court unfairly applied page limitations, the Court of Appeals pointed out that page limitations applied only to legal briefing but did not apply to evidentiary exhibits and that the District Court on its own initiative

even granted the petitioners additional pages for their legal memoranda opposing the motions for summary judgment, though the petitioners failed to take full advantage of that allowance. The Court of Appeals likewise rejected as utterly unsubstantiated the petitioners' accusations that the District Court judge's decisions were racially motivated, noting that the trial court responsibly managed a case that in truth consisted of fourteen (14) different cases brought by plaintiffs asserting individual and factually distinct claims. Considering the merits of the petitioners' claims, the Court of Appeals noted that the petitioners failed to substantiate their claims with citations to the record and additionally failed to offer any relevant criticism of the District Court's sound legal analysis.

The petition now before this Court similarly fails to offer any relevant criticism to the Court of Appeals' decision that would justify further review by this Court based on any of the considerations described under Rule 10(a) of the Rules of the Supreme Court of the United States. In particular, the petition does not suggest that the Court of Appeals' decision is in conflict with the decision of another United States court of appeals on any important question. The petition likewise does not suggest that the Sixth Circuit decided an important federal question in a way that conflicts with a decision by a state court of last resort. Nor is there any basis to say that the Sixth Circuit's ruling has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

For their part, the petitioners say that this case will present the question of whether the petitioners were

denied due process and equal protection "by the lower courts weighing evidence and excluding relevant admissible evidence, which decision directly contradicts this court's prior decision in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000)." Contrary to the petitioners' assertion, this case presents none of those issues.

First, there is no suggestion in the decision by the Court of Appeals (nor in any of the fourteen separate decisions rendered by the District Court) that the lower courts "weighed" evidence when determining whether to grant or affirm summary judgment. To the contrary, the decisions confirm that the lower courts properly examined all of the evidence of record before determining that the petitioners had failed to present any or at least sufficient evidence to support their employment discrimination claims. Neither the District Court nor the Court of Appeals "weighed" the evidence. At any rate, the standard for reviewing evidence in summary judgment motion practice under Rule 56 of the Federal Rules of Civil Procedure is well established and does not require further exposition by the Court in this case.

Second, the petition does not identify the "relevant admissible evidence" that was supposedly excluded by the lower courts. The petitioners did not make this argument to the Court of Appeals, nor did the Court of Appeals address, much less have any reason to address, the supposed exclusion of evidence. To the extent that the petitioners belatedly sought without excuse to "update" their exhibits and affidavits after the expiration of the trial court's deadline to supplement the evidentiary record, the petitioners' failure to submit evidentiary materials timely within the trial court's already extended deadline was not

an improper exclusion of evidence by the trial court. In any case, this again does not present any issue demanding review by this Court.

Third, there no basis whatsoever for the petitioners to suggest that the Court of Appeals' decision "directly contradicts" this Court's decision in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000). In *Reeves*, the Court held that because the petitioner had established a prima facie case of age discrimination, introduced enough evidence for the jury to reject the respondent's explanation, and produced additional evidence of age-based animus, there was sufficient evidence for the jury to find that the respondent had intentionally discriminated.

In the matter at hand by contrast, the petition now before this Court does *not* include in its appendix any of the District Court's detailed memorandum opinions that methodically analyzed each of the petitioners' claims. Had those memorandum opinions been provided, they would show that the District Court in fact determined that petitioners Garner, Dennis, McNear, Isom, Washington, and Bellamy had failed to establish even a prima facie case of discrimination on *any* of their claims; that petitioners Colwell and Jenkins had each failed to establish a prima facie case of discrimination on all of their claims except for one denied job position; and that petitioner McCollough had failed to establish a prima facie case of discrimination on all of her claims except for two denied job positions. And as to those positions for which petitioners Colwell, Jenkins, and McCollough had at least established a prima facie case, the District Court ultimately determined that these petitioners failed to introduce evidence to question the respondents' legitimate nondiscriminatory explanation.

Thus unlike the discharged employee in *Reeves* who established a prima facie case of age discrimination, introduced enough evidence for the jury to reject the employer's explanation, and produced additional evidence of age-based animus, the petitioners in the case at bar failed to produce sufficient evidence to support any of their claims. Moreover, the petitioners' initial and reply briefs in the Court of Appeals did not argue to the Court of Appeals that the District Court's rulings were contrary to *Reeves*. The petitioners made this argument only in their petition for rehearing en banc and only in conclusory fashion without discussion or analysis. The Court of Appeals' decision does not even cite *Reeves* to suggest that it was material to the disposition of this case. Nor have the petitioners demonstrated here that the Court of Appeals' decision is in any way inconsistent with *Reeves*. In short, there is nothing about the decisions rendered in this case that have any connection to *Reeves*, so there is no factual or legal basis for the question that this petition ostensibly presents.

Though not expressly within the scope of the question presented by the petition, the petitioners additionally argue that the Court of Appeals' decision conflicts with *Burlington Northern & Santa Fe Railway Co. v. White*, ___ U.S. ___, 126 S.Ct. 2405, 165 L.Ed.2d 345 (2006), which was decided prior to the Court of Appeals' decision under review here. This argument again was not asserted by the petitioners prior to the Court of Appeals' decision and again was raised by the petitioners only in their petition for rehearing en banc and only in conclusory fashion without discussion or analysis. In any case, the petition utterly fails to articulate any grounds for this Court to review claims that were examined thoroughly by the

District Court and again by the Court of Appeals, each of which determined that the evidence presented was woefully insufficient.

In sum, the cases presented by these nine (9) petitioners are necessarily fact bound by their individual and particular circumstances. There is nothing remarkable legally about the claims asserted in this case. Neither the claims presented by these petitioners nor their legal arguments contesting the lower court decisions present any issue that is of constitutional dimension or of great national significance. The Sixth Circuit Court of Appeals decided this case appropriately by carefully considering the petitioners' procedural and substantive challenges to the District Court's rulings before determining that the petitioners had failed to demonstrate any error by the trial court. The petitioners have similarly failed here to exemplify any error by the Court of Appeals in its determination of this case or to present any substantial issue deserving the review of this Court. There is accordingly no reason for further judicial resources to be expended on these cases.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

WILLIAM D. MASON, Prosecuting
Attorney of Cuyahoga County, Ohio
CHARLES E. HANNAN* (0037153)
Assistant Prosecuting Attorney
**Counsel of Record*
The Justice Center, Courts Tower,
8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
Tel: (216) 443-7758/Fax: (216) 443-7602
E-mail: P4CEH@cuyahogacounty.us

Counsel for Respondents